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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,570	12/05/2001	Ruby Mercado	1001.300	6659

7590 10/19/2004

Patent Attorney  
39 Encantado Canyon  
Rancho Santa Maragrita, CA 92688

EXAMINER

WEAVER, SUE A

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/008,570

Applicant(s)

MERCADO ET AL.

Examiner

Sue A. Weaver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 7-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said six walls" in line 12. There is insufficient antecedent basis for this limitation in the claim.

Applicants set forth six sides on line 2 and a peripheral wall on line 3 but there isn't any support for six walls. In like manner there isn't any support for "each wall" in claim 2 if only a peripheral wall is set forth.

Claims 5 and 6 each recites the limitation "said flexible material" in the first line. There is insufficient antecedent basis for this limitation in the claim.

Although applicants have claimed flexible sides there isn't any claim for flexible material. How do the sides relate to the material?

Claim 21 recites the limitation "the case" in line 6. There is insufficient antecedent basis for this limitation in the claim.

A case is set forth in claim 1, not claim 21. Moreover "an openable portion" on line 4 appears to be a double inclusion of an openable portion on line 2 of the claim, as applicants have not properly related the structures.

2. Claims 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Thornhill et al.

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Applicants have amended claims 1 and 11 which by eliminating the plastic material and instead claiming that rigidifying members are all removable.

Thornhill et al teach a bag which has pockets formed between poke to receive rigidifying inserts 23, 24 and 25 which are removed so that the bag may be laundered. Because Thornhill teaches the use of a launderable limp fabric for the bag it will inherently be collapsible or compressible once the inserts are removed, as claimed. Note the handle at 36.

3. Claims 11, 14, 16, 19, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Brenner.

Brenner teaches a flexible bag (1) or transportation case which has pocket to receive rigidifying inserts 19, 21, 23, 25, 27, 29 and 31. Note handles 55 and the folded bag (1) with the inserts removed as shown in Figure 3. Members 57 define rollers attached to the bottom of the bag, insofar as applicants have claimed any particular attachment structure. The Plexiglas taught by Brenner is considered to define a "plastic like" material as claimed.

4. Claims 23 and 24 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Thornhill et al in view of Jantzen.

To have alternately made the inserts for the bag of Thornhill et al of a waterproof material like plastic would have been obvious in view of such teaching by Jantzen.

Claims 1-3, 5, 6, 11, 12, 14-16, 17, 19-21, 23 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson '818, of record in view of Brenner and Legendre.

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The bags taught each of Johnson '818, Brenner and Legendre are all transportation bags made of flexible material, having six sides and removable reinforcing inserts which are received in pockets in the sides. Applicants have amended the claims to require all inserts be removable, something taught by both Brenner and Legendre. To eliminate a part and its function has long been held to be obvious. Therefore to eliminate the permanently mounted rollers of the bag of Johnson's particular where it is used with a cart apparatus of the type taught by Brenner would have been obvious. Furthermore to have made the panel 55 removable so that the bag can be further collapsed or compressed would also have been obvious in view of the teaching of either Brenner or Legendre. Note the use of plastic by Johnson and Legendre. Note that both Brenner and Legendre teach supporting the handle with loops that go under the bag body and up the side. To have secured the handles of the bag of Johnson in this well known manner to provide further support to the bottom would have been most obvious. Legendre already teaches the use of Nylon as the material for the bag body. Moreover to have optionally made the bag of a cubic shape depending on the equipment carried would have been obvious in view of Legendre teaching such optional shape.

5. Claims 4 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 3 and 21 above, and further in view of Simonett et al, of record.

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To have optionally have made the bag dimensions between 18x18x18 and 21x21x21 inches depending on the intended use would have been obvious in view of Simonett et al teaching a bag which might be varied in size.

6. Claims 13 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 11 and 16 above, and further in view of Pelky et al, of record.

To have further provided transparent pockets on the bag to view the contents would have been obvious in view of such teaching by Pelky et al.

7. Applicant's arguments with respect to claims 1-6 and 11-24 have been considered but are moot in view of the new ground(s) of rejection.

8. Claims 7-10 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed in Paper No. 7.

9. Applicant's arguments, see page 6 of the amendment, filed 8/4/04, with respect to the rejection of claim 11-15 under 25 USC 112 have been fully considered and are persuasive. The rejection under 35 USC 112 of s 11-15 has been withdrawn.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Birkestrand and Hazelton show other bags with removable inserts. Cuthbertson shows a bulk bag with continuous loop handles. Popp shows a cubic bulk bag.

11. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in

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such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

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\_\_\_\_\_

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (703) 308-1186. The examiner can normally be reached on Tuesday-Friday.

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— The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SW

  
Sue A. Weaver  
Primary Examiner